

Friedmann

EXHIBIT B

IN RE: SEARS HOLDINGS CORPORATION, et al.

MOHSIN MEGHJI

June 21, 2019



Original File 275535.txt

Min-U-Script® with Word Index

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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3 In Re:

4 SEARS HOLDINGS CORPORATION, et al.,

5 Debtor.

6 Chapter 11 - Case No.: 18-23538 (RDD)

-----X

7
8 767 Fifth Avenue
9 New York, New York

10 June 21, 2019
11 11:33 a.m.

12 DEPOSITION of MOHSIN MEGHJI, before
13 Melissa Gilmore, a Shorthand Reporter and
14 Notary Public of the State of New York.

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23 ELLEN GRAUER COURT REPORTING CO., LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 275535

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21 ALSO PRESENT:

22 BRIAN GRIFFITH, M-III

23 CHRISTOPHER GOOD, M-III

24 JACK WHITELEY, Law Clerk, Cleary Gottlieb

25 STEVE SZROM, Law Clerk, Cleary Gottlieb

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9	Exhibit 1	E-Mail from Natasha	9
10		Hwangpo, dated January 6,	
11		2019	
12	Exhibit 2	E-Mail from Josh	23
13		Gruenbaum to Kunal	
14		Kamlani, dated January 8,	
15		2019	
16	Exhibit 3	Minutes of Meeting,	25
17		January 9, 2019, Bates	
18		Stamped SEARS_UCC00413790	
19		through 413792	
20	Exhibit 4	E-Mail from Charles Allen	30
21		to Brandon Aebersold,	
22		dated January 9, 2019	
23	Exhibit 5	Asset Purchase Agreement,	38
24		Execution Version	
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MEGHJI	DESCRIPTION	FOR I.D.
Exhibit 6	E-Mail from Chris Good to Kunal Kamalani, dated January 8, 2019	48
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(EXHIBITS TO BE PRODUCED)

1 M O H S I N M E G H J I, called as a
2 witness, having been duly sworn by a
3 Notary Public, was examined and testified
4 as follows:

5

6 EXAMINATION BY

7 MR. MAINOO:

8 Q. Good morning. As I mentioned
9 earlier, my name is Abena Mainoo. I'm a lawyer
10 at Cleary Gottlieb. I represent Transform
11 Holdco.

12 A. Good morning.

13 Q. Please state your name for the
14 record.

15 A. Mohsin Meghji, M-O-H-S-I-N.

16 Q. Mr. Meghji, you have been deposed
17 before?

18 A. Yes.

19 Q. So you understand that the court
20 reporter will be recording your answers and I
21 will be asking you questions?

22 A. I do.

23 Q. And in response to my questions, I
24 need you to answer orally so the court reporter
25 can record your responses.

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2 used in the Asset Purchase Agreement, correct?

3 A. I believe so.

4 Q. How is the term "ordered inventory"
5 used in the Asset Purchase Agreement?

6 A. Can I have a look at the Asset
7 Purchase Agreement? I don't recall it
8 specifically.

9 Q. Okay.

10 (Meghji Exhibit 5, Asset Purchase
11 Agreement, Execution Version, marked for
12 identification.)

13 Q. Mr. Meghji, you have been handed
14 Exhibit 5, which is the Asset Purchase
15 Agreement, execution version, and the
16 definition of ordered inventory is on page 24.

17 And it says, "Ordered inventory
18 shall mean inventory other than prepaid
19 inventory of the type set forth on Schedule
20 1.1(f) that has been ordered by sellers prior
21 to the closing date, but as to which sellers
22 have not taken title or delivery prior to the
23 closing date."

24 So my question, Mr. Meghji, ordered
25 inventory would have come with payment

1 MEGHJI

2 obligations, correct?

3 A. No.

4 MR. FRIEDMANN: Object to form.

5 A. Not in this instance.

6 Q. Ordered inventory would have had
7 some associated payment obligations at some
8 point in time, correct?

9 MR. FRIEDMANN: Object to form.

10 A. Let me read this again, and I'll
11 explain. "Ordered inventory shall mean
12 inventory of the type" --

13 MR. FRIEDMANN: Don't skip words.

14 A. "Ordered inventory shall mean
15 inventory other than prepaid inventory of the
16 type set forth on Schedule 1.1(f) that has been
17 ordered by sellers prior to the closing date,
18 but as to which sellers have not taken title or
19 delivery prior to the closing date."

20 For this type of ordered inventory,
21 there is no payment obligation.

22 Q. When ordered inventory is delivered,
23 there is a payment obligation, correct?

24 MR. FRIEDMANN: Object to form.

25 A. When ordered inventory is delivered

1 MEGHJI

2 in the future, there is -- there will -- it
3 will create a future payment obligation. This
4 says here, "but as to which sellers have not
5 taken title or delivery prior to the closing
6 date."

7 Q. When inventory that has been ordered
8 is delivered, payment needs to be made to the
9 vendor that sends the inventory, correct?

10 A. After it's delivered.

11 Q. Okay.

12 A. And title -- and/or title has been
13 taken.

14 Q. And so there would be value in
15 transferring the liability to make that payment
16 to the vendor, correct?

17 MR. FRIEDMANN: Object to form.

18 A. I'm sorry. There's no liability
19 associated with ordered inventory as it's
20 defined here, under the term "ordered
21 inventory."

22 Q. I think you agreed with me when I
23 said, "When inventory that has been ordered is
24 delivered, the payment needs to be made to the
25 vendor."

1 MEGHJI

2 But then, at that point, it creates
3 an asset called prepaid inventory.

4 Q. Are there any payment obligations
5 associated with ordered inventory?

6 MR. FRIEDMANN: Object to form.

7 You're referring to ordered
8 inventory generally or as it's defined in
9 the APA?

10 A. Liabilities only get created or cash
11 goes out for prepaid inventory. Liabilities do
12 not get created simply from ordered inventory.

13 Q. And my question is, are there any
14 payment obligations associated with ordered
15 inventory?

16 MR. FRIEDMANN: Object to form,
17 asked and answered.

18 A. Not that I can think of.

19 (Meghji Exhibit 6, E-Mail from Chris
20 Good to Kunal Kamalani, dated January 8,
21 2019, marked for identification.)

22 Q. Mr. Meghji, you have been handed
23 what's marked as Exhibit 6. At the top of it
24 is an e-mail from Chris Good to
25 kunal@eslinvest.com. And you're copied on it.

1 MEGHJI

2 Q. Do you remember anything else from
3 this conversation?

4 A. Not off the top of my head.

5 Q. Mr. Gruenbaum worked at Moelis,
6 correct?

7 A. Yes.

8 Q. And Moelis was Transform's advisor?

9 A. Correct.

10 Q. Mr. Kamlani, are you familiar with a
11 credit provided under an economic development
12 agreement to Sears Holdings Corporation?

13 MR. FRIEDMANN: It's not
14 Mr. Kamlani.

15 A. Mr. Kamlani is not here.

16 Q. Apologies. This document mentions
17 Mr. Kamlani.

18 Mr. Meghji, are you familiar with
19 the credit provided to Sears Holdings
20 Corporation under an economic development
21 agreement?

22 A. Yes.

23 Q. And is it your understanding that
24 Sears' eligibility for that economic
25 development agreement credit was based on the

1 MEGHJI

2 number of workers with 35 or more hours a week
3 employed by Sears, Sears' contractors and
4 attendant companies at Hoffman Estates?

5 A. In general, yes.

6 (Meghji Exhibit 8, E-Mail from
7 Hayden Guthrie to Charles Allen, dated
8 February 4, 2019, marked for
9 identification.)

10 Q. Mr. Meghji, you have been handed
11 Exhibit 8. It's an e-mail from Hayden Guthrie
12 at Weil, dated February 4, 2019, and the e-mail
13 reads, "Please see attached for an updated
14 draft of the APA amendments and a redline
15 against the Cleary draft of February 3, 2019,"
16 correct?

17 A. That's what it looks like, correct.

18 Q. And according to this e-mail, Weil
19 was sending an updated version of the
20 amendments to the Asset Purchase Agreement,
21 correct?

22 A. That's what it says.

23 Q. So let's turn to the attachment,
24 which is entitled "Amendment No. 1 to Asset
25 Purchase Agreement."

1 MEGHJI

2 You previously provided a
3 declaration to the bankruptcy court concerning
4 those, the receipt of monies from the EDA
5 funds, correct?

6 A. Yes.

7 Q. What is your understanding as to how
8 those EDA funds are created? Where does that
9 money come from?

10 A. It's a rebate of the property taxes
11 paid by Sears.

12 Q. Mr. Meghji, you were also asked
13 earlier a series of questions about ordered
14 inventory. And when I'm asking questions, I'm
15 referring specifically to ordered inventory as
16 that term is defined in the Asset Purchase
17 Agreement.

18 So if you want to turn to the
19 definition there to make sure you've got that
20 in mind when answering the question.

21 A. Okay.

22 Q. It's on page 24 for everybody
23 following along at home.

24 Why is it that ordered inventory, as
25 it's defined in the Asset Purchase Agreement,

1 MEGHJI

2 doesn't create any payment obligation?

3 A. Because, as defined in the purchase
4 agreement, where you have not taken title or
5 delivery of ordered inventory, there is no
6 payment obligation. So you could cancel that
7 order and not have any liability.

8 Q. So was there some benefit to the
9 debtor from Transform agreeing to take on or
10 assume the obligations for any ordered
11 inventory as that term is defined in the Asset
12 Purchase Agreement?

13 A. There was no financial benefit. It
14 was really to ensure that, as an ongoing
15 business, they assumed the ordered inventory
16 obligations to keep the business running.

17 Q. But on the same side, what if
18 Transform had said, no, we're not going to take
19 it, we're going to leave the ordered inventory
20 with Sears or with debtor, I should say, would
21 debtor have been worse off had Transform not
22 agreed to take on the ordered inventory?

23 A. I think we would have gone to the
24 vendors and canceled the orders.

25 Q. Would there have been any impact,

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MEGHJI

from your perspective as the CRO, on the
debtor's financial status by doing so?

A. Not -- there would not be a
significant liability if we hadn't taken any of
the goods, either delivery or title of those.

Q. Would there have been a payment
obligation if you had canceled those orders?

A. I don't believe so.

MR. FRIEDMANN: I have nothing
further.

MS. MAINOO: Nothing further.

MR. FRIEDMANN: Thank you.

MS. MAINOO: Thank you.

(Time noted: 1:07 p.m.)

A C K N O W L E D G M E N T

STATE OF)
:ss
COUNTY OF)

I, MOHSIN MEGHJI, hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition; that the
transcript is a true, complete and correct
record of my testimony, and that the answers on
the record as given by me are true and correct.

MOHSIN MEGHJI

Signed and subscribed to before me
this _____ day of _____, ____.

Notary Public, State of _____

C E R T I F I C A T E

STATE OF NEW YORK)

:ss

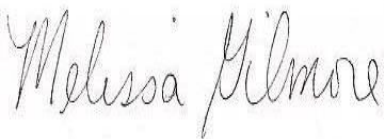
COUNTY OF RICHMOND)

I, MELISSA GILMORE, a Notary Public
within and for the State of New York, do hereby
certify:

That MOHSIN MEGHJI, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage; and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 21st day of June, 2019.



MELISSA GILMORE